



Agenda Date: 1/9/02

Agenda Item: 4F

STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR AN)
ORDER AUTHORIZING ACSI LOCAL)
SWITCHED SERVICES, INC. A/K/A E.SPIRE)
COMMUNICATIONS, INC. TO PROVIDE)
LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES)
THROUGHOUT NEW JERSEY)

ORDER OF APPROVAL

DOCKET NO. TE00070441

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated July 14, 2000, ACSI Local Switched Services, Inc. a/k/a e.spire Communications, Inc. (Petitioner or e.spire) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange and interexchange services throughout the State of New Jersey. e.spire responded to a Staff questionnaire by letter dated March 16, 2001 and to Staff interrogatories by letters dated September 18, 2000, September 10, 2001 and October 15, 2001.

According to the petition, Petitioner was incorporated under the laws of the State of Maryland on November 27, 1996 as ACSI Switched Services, Inc. On March 17, 1997 the company amended its Articles of Incorporation, changing its name to ACSI Local Switched Services, Inc. Petitioner's principal offices are located at 12975 Worldgate Drive, Herndon, Virginia 20170. Petition at 2.

Petitioner submitted copies of its Articles of Incorporation, Maryland Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. Petition at 2, Exhibit A; September 18, 2001 letter. September 10, 2001 letter. According to the petition, e.spire was formed to provide local exchange and interexchange services. Petition at 2. Petitioner advised that it is currently certified to provide facilities-based and resold local exchange and interexchange services in Pennsylvania. In addition, e.spire is certified to provide resold and facilities-based local exchange and resold interexchange service in Alabama, Arizona, Colorado, the District of Columbia, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Missouri, Nevada, New Mexico, New York, Oklahoma, South Carolina, Tennessee, Texas and Virginia. Finally, e.spire is certified in Mississippi to provide resold local exchange and interexchange only. September 10, 2001 letter. e.spire advises that it has not been

denied authority to provide telecommunications services in any state. In addition, e.spire indicates that it has no pending civil, criminal, or administrative actions against it.

e.spire advised that it is planning to initiate negotiations with Verizon New Jersey, Inc. for an interconnection agreement.

In its petition, Petitioner advised that it seeks authority to offer local exchange and interexchange telecommunications services to small and medium sized business customers throughout New Jersey. In order to offer its services, e.spire may use its own facilities, facilities leased from other telecommunications providers, services purchased for resale, unbundled network elements, or a combination of these. March 16, 2001 letter.

Petitioner requested a waiver of N.J.A.C. 14:1-4.3, 14:1-5.15 and 14:10-16, which require that its books and records be maintained in accordance with the Uniform System of Accounts (USOA) and within the State of New Jersey. In the interest of efficiency and to prevent undue burden, Petitioner requested permission to maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Petition at 7. Petitioner also requested permission to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Herndon, Virginia. Petition at 6. Petitioner also stated that, upon written notice from the Board, it will produce its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records. Petition at 7.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petition at 5. Petitioner also asserted that approval of this petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. Petition at 5.

With regard to its technical and managerial qualifications, e.spire stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petition at 5. Petitioner submitted the professional biographies of its key personnel who, according to e.spire, are well qualified to execute its business plans, and have extensive managerial and technical experience in the telecommunications industry. Petition at 5, Exhibit C.

Petitioner has submitted, as evidence of its financial qualifications, forms 10K and 10Q for its parent corporation, e.spire Communication, Inc., and will need to file two years pro forma income statements and balance sheets for its New Jersey operations prior to approval of its tariff.

The Division of the Ratepayer Advocate recommended approval of this petition by letter date January 4, 2002.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed e.spire's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange and interexchange telecommunications services in New Jersey subject to approval of its tariff and the submission of pro forma financial statements for its New Jersey operations. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided.

Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that Petitioner maintain its books and records under the USOA and within New Jersey.

Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

DATED: 1/10/02

BOARD OF PUBLIC UTILITIES
BY:

(signed)
CONNIE O. HUGHES
PRESIDENT

(signed)
FREDERICK F. BUTLER
COMMISSIONER

(signed)
CAROL J. MURPHY
COMMISSIONER

ATTEST:

(signed)
HENRY M. OGDEN
ACTING BOARD SECRETARY

Service List

Docket No. TE00070441

James H. Laskey, Esq.
Norris, McLaughlin & Marcus, P.A.
P.O. Box 1018
Sumerville, NJ 08876-1018

James C. Falvey
Senior Vice President-Regulatory Affairs
e.spire Communications, Inc.
131 National Business Parkway, Suite 100
Annapolis Junction, MD 20701

Blossom A. Peretz, Esq., Director
Division of Ratepayer Advocate
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

James F. Murphy
James M. Corcoran
Bruce W. Gallagher
Division of Telecommunications
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Eugene Provost, D.A.G.
Department of Law & Public Safety
124 Halsey Street, 5th Floor
Newark, NJ 07102